

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHEF ALESSANDRO PIROZZI, INC.
and PIROZZI ENTERPRISES, LLC,

No. 22 Civ. 902 (DG) (SIL)

Plaintiffs,

-against-

CARDCONNECT, LLC
and FISERV, INC.,

Defendants.

**DECLARATION OF CHARLES J. NERKO IN SUPPORT OF
MOTION OF BARCLAY DAMON LLP TO WITHDRAW AS PLAINTIFFS' COUNSEL**

CHARLES J. NERKO, declares the following under penalties of perjury pursuant to 28 U.S.C. 1746:

1. I am a member of Barclay Damon LLP, the firm representing plaintiffs in this action. I submit this Declaration in support of Barclay Damon LLP's motion, pursuant to Local Civil Rule 1.4, seeking (a) permission for the firm and its attorneys Charles J. Nerko, Benjamin M. Wilkinson, and Sarah A. O'Brien to withdraw as counsel for plaintiffs, and (b) a stay of the action to allow plaintiffs an opportunity to engage successor counsel.

2. Plaintiffs have notified Barclay Damon LLP in writing that they have discharged the firm. Barclay Damon LLP seeks permission to withdraw as plaintiffs' counsel because its engagement has concluded, and neither the firm nor plaintiffs wish to continue their relationship. Accordingly, Barclay Damon LLP seeks to withdraw in accordance with Rule 1.16 of the New York Rules of Professional Conduct.

3. A motion to dismiss is currently pending in this action (ECF No. 35). The parties have exchanged informal discovery and served initial formal discovery requests on each other.

Responses to the formal discovery requests are not yet due. Given the case's early posture, Barclay Damon LLP's withdrawal will not prejudice the parties. However, due to upcoming deadlines for the parties to respond to each other's discovery requests, a 60-day stay of this action is requested to allow plaintiffs an opportunity to engage successor counsel.

4. Defendants' counsel, John Peterson, advised me that defendants do not oppose the requested 60-day stay.

5. Additional grounds also support Barclay Damon LLP's withdrawal as plaintiffs' counsel, including those enumerated in Rule 1.16(c) of the New York Rules of Professional Conduct. The firm's submission has been limited as much as possible to show a basis for withdrawal, without unduly prejudicing plaintiffs by revealing confidential or privileged information. If the Court requires additional information to support the firm's withdrawal, Barclay Damon LLP is prepared to make an *in camera* showing.

6. In accordance with Local Civil Rule 1.4, Barclay Damon LLP discloses that it is asserting a retaining lien under New York law.

7. Barclay Damon LLP will serve this application upon plaintiffs by email to plaintiffs' principal and California counsel, as well as by overnight delivery to plaintiffs' business. Other parties will be served by ECF filing.

8. No prior application has been made for similar relief.

WHEREFORE, Barclay Damon LLP respectfully requests that (a) the firm and its attorneys, Charles J. Nerko, Benjamin M. Wilkinson, and Sarah A. O'Brien, be granted permission to withdraw as counsel for plaintiffs in this action, (b) the Clerk remove those attorneys from future ECF notifications in this matter, (c) this action be stayed for 60 days to

allow plaintiffs an opportunity to engage successor counsel, and (d) the Court grant any other relief deemed fair and proper.

Dated: March 31, 2023

/s/ Charles J. Nerko
Charles J. Nerko
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